



BILLING CODE: 3510-22-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 622

[Docket No. 170627600-8521-02]

RIN 0648-BG99

Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Mutton Snapper and Gag Management Measures

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: NMFS issues regulations to implement management measures described in a framework action to the Fishery Management Plan for the Reef Fish Resources of the Gulf of Mexico (FMP), as prepared by the Gulf of Mexico (Gulf) Fishery Management Council (Council). This final rule revises the mutton snapper commercial and recreational minimum size limits, the recreational bag limit, and the stock annual catch limit (ACL). In addition, this final rule revises the gag commercial minimum size limit. The purposes of this final rule are to reduce harvest of mutton snapper to prevent overfishing while also achieving optimum

yield (OY), and streamline management measures to help increase compliance with the fishing regulations for mutton snapper and gag in the exclusive economic zone (EEZ) of the Gulf off Florida.

DATES: This final rule is effective [*insert date 30 calendar days after date of publication in the FEDERAL REGISTER*].

ADDRESSES: Electronic copies of the framework action, which includes an environmental assessment, a regulatory impact review, and a Regulatory Flexibility Act (RFA) analysis may be obtained from the Southeast Regional Office Web Site at http://sero.nmfs.noaa.gov/sustainable_fisheries/gulf_fisheries/reef_fish/2017/mutton_gag/mutton_gag_index.html.

FOR FURTHER INFORMATION CONTACT: Rich Malinowski, NMFS SERO, telephone: 727-824-5305, email: Rich.Malinowski@noaa.gov.

SUPPLEMENTARY INFORMATION: The Gulf reef fish fishery includes mutton snapper and gag and is managed under the FMP. The FMP was prepared by the Council and is implemented by NMFS through regulations at 50 CFR part 622 under the authority of the Magnuson-Stevens Fishery Conservation and Management Act (Magnuson-Steven Act) (16 U.S.C. 1801, et seq.).

On February 15, 2018, NMFS published a proposed rule for the framework action and requested public comment (83 FR 6830). The proposed rule and framework action outlined the rationale for the actions contained in this final rule. A summary of the management measures described in the framework action and implemented by this final rule is provided below.

Management Measures Contained in This Final Rule

For mutton snapper, this final rule revises the stock ACL (given in round weight), the commercial and recreational minimum size limits, and the recreational bag limit. This final rule also revises the gag commercial minimum size limit.

Mutton Snapper Stock ACL

This final rule sets the Gulf mutton snapper stock ACL at 134,424 lb (60,974 kg) for the 2018 fishing year, 139,392 lb (63,227 kg) for the 2019 fishing year, and 143,694 lb (65,179 kg) for the 2020 fishing year and subsequent fishing years. The ACLs are consistent with the current apportionment between the Gulf and South Atlantic and are equal to the Gulf's portion of the acceptable biological catch recommended by the Council's Scientific and Statistical Committee (SSC).

Mutton Snapper Recreational Bag Limit

This final rule reduces the recreational bag limit applicable to the Gulf EEZ to 5 mutton snapper per person per day within the 10-snapper aggregate bag limit to be consistent with the Florida state bag limit and South Atlantic EEZ bag limit. NMFS and the Council expect consistent mutton snapper recreational bag limits across the Gulf and South Atlantic EEZs and Florida state waters to improve regulatory compliance and decrease the burden for law enforcement.

Mutton Snapper Minimum Size Limit

This final rule revises the mutton snapper commercial and recreational minimum size limits to 18 inches (45.7 cm), total length (TL), in the Gulf EEZ to be consistent with the state of Florida and South Atlantic EEZ minimum size limits. As with the change to the recreational bag limit, this revision increases regulatory consistency to improve compliance and decrease the burden for law enforcement.

Because more than 95 percent of mutton snapper landings from the Gulf are from the commercial sector and 95 percent of the commercially landed mutton snapper are larger than 20 inches (50.8 cm), NMFS expects little effect

on the spawning population and harvest rates as a result of this change.

Gag Commercial Minimum Size Limit

This final rule increases the Gulf gag commercial minimum size limit to 24 inches (60.9 cm), TL, to make the commercial minimum size limit consistent with the Gulf EEZ recreational minimum size limit, as well as consistent with the South Atlantic EEZ and state of Florida commercial and recreational size limits. Over 98 percent of Gulf commercial gag landings come from waters adjacent to Florida and 94.5 percent of commercially harvested gag in the Gulf waters are at least 24 inches. Therefore, NMFS and the Council expect increasing the commercial minimum size limit to improve compliance and decrease the burden for law enforcement by increasing regulatory consistency, but do not expect an increase in regulatory discards of gag.

Comments and Responses

NMFS received three comments related to the proposed rule for the framework action. These comments either agreed with the proposed changes or suggested additional modifications to management measures such as prohibiting commercial harvest of gag or modifying the recreational closed seasons, which were beyond the scope of the proposed

rule. No changes were made to this final rule based on public comment.

Classification

The Regional Administrator for the NMFS Southeast Region has determined that this final rule is consistent with the framework action, the FMP, the Magnuson-Stevens Act, and other applicable law.

This final rule has been determined to be not significant for purposes of Executive Order (EO) 12866. This rule is not an Executive Order 13771 regulatory action because this rule is not significant under EO 12866.

In compliance with section 604 of the Regulatory Flexibility ACT (RFA), NMFS prepared a final regulatory flexibility analysis (FRFA) for this final rule. The FRFA follows.

The Magnuson-Stevens Act provides the statutory basis for this final rule. A description of the final rule, why it is being considered, and the objectives of, and legal basis for this final rule are contained in the **SUMMARY** and **SUPPLEMENTARY INFORMATION** sections of the preamble. No duplicative, overlapping, or conflicting Federal rules have been identified. In addition, no new reporting, record-keeping, or other compliance requirements are introduced by

this final rule. Accordingly, this final rule does not implicate the Paperwork Reduction Act.

No public comments were received relating to the socio-economic implications and potential impacts on small business entities, therefore no changes to this final rule were made in response to public comments. No comments were received from the Office of Advocacy for the Small Business Administration.

NMFS agrees that the Gulf Council's preferred alternatives will best achieve their objectives for the framework action while minimizing, to the extent practicable, the adverse effects on fishers, support industries, and associated communities.

NMFS expects this final rule to directly affect all commercial vessels that harvest Gulf mutton snapper and/or gag under the FMP. Changes to ACLs, recreational minimum size limits, or recreational bag limits in this framework and final rule will not directly apply to or regulate charter vessel and headboat (for-hire) businesses. Any impact to the profitability or competitiveness of for-hire fishing businesses will be the result of changes in for-hire angler demand and will therefore be indirect in nature. The RFA does not consider recreational anglers, who

will be directly affected by this final rule, to be small entities, so they are outside the scope of this analysis and only the effects on commercial vessels were analyzed. For RFA purposes only, NMFS has established a small business size standard for businesses, including their affiliates, whose primary industry is commercial fishing (see 50 CFR 200.2). A business primarily engaged in commercial fishing (NAICS code 11411) is classified as a small business if it is independently owned and operated, is not dominant in its field of operation (including affiliates), and has combined annual receipts not in excess of \$11 million for all its affiliated operations worldwide.

As of April 5, 2018, there were 842 vessels with valid or renewable Federal Gulf reef fish commercial vessel permits. From 2010 through 2015, an average of 119 vessels per year landed mutton snapper in state and Federal waters of the Gulf. These vessels, combined, averaged 429 trips per year in the Gulf on which mutton snapper were landed and 1,594 other trips taken in the Gulf on which no mutton snapper were landed or were taken in the South Atlantic. The average annual total dockside revenue (2015 dollars) was approximately \$0.22 million from mutton snapper, approximately \$4.34 million from other species co-harvested

with mutton snapper (on the same trips), and approximately \$12.10 million from other trips by these vessels in the Gulf on which no mutton snapper were harvested or occurred in the South Atlantic. Total average annual revenue from all species harvested by vessels harvesting mutton snapper in the Gulf was approximately \$16.66 million, or approximately \$138,764 per vessel. For the same period, an average of 375 vessels per year landed gag in the Gulf. These vessels, combined, averaged 2,936 trips per year in the Gulf, on which gag were landed and 2,416 trips taken either in the Gulf on which gag were not harvested or trips taken in the South Atlantic. The average annual total dockside revenue (2015 dollars) for these 375 vessels was approximately \$2.39 million from gag, approximately \$25.32 million from other species co-harvested with gag (on the same trips in the Gulf), and approximately \$17.06 million from the other trips taken by these vessels. The total average annual revenue from all species harvested by these 375 vessels was approximately \$44.77 million, or approximately \$120,238 per vessel. Based on the foregoing revenue information, all commercial vessels affected by the final rule may be assumed to be small entities.

Because all entities expected to be directly affected by this final rule are assumed to be small entities, NMFS has determined that this final rule will affect a substantial number of small entities; however, the issue of disproportionate effects on small versus large entities does not arise in the present case.

Relevant to commercial vessels, the final rule modifies the 2018-2020, and subsequent years', ACLs for the Gulf apportionment of mutton snapper; increases the minimum size limit for commercial mutton snapper in the Gulf to 18 inches (45.7 cm) TL; and, increases the commercial minimum size limit for gag in the Gulf to 24 inches (60.9 cm) TL.

Modifying the ACLs for mutton snapper will result in ACL reductions each year from 2018 through 2020. Vessel revenue reductions corresponding to these reduced ACLs will be approximately \$166,000 in 2018, \$154,000 in 2019, and \$143,000 in 2020, or an annual average of approximately \$160,000 for the four-year period. If distributed equally among the 119 vessels, average annual revenue loss will be approximately \$1,350 per vessel. This annual revenue loss per vessel will be approximately 1 percent of average per vessel revenues from all species.

Increasing the Gulf mutton snapper minimum size limit from 16 inches (40.6 cm), TL, to 18 inches (45.7 cm), TL, affects approximately 0.2 percent of commercial landings, or approximately \$495 annually in total vessel revenues. This revenue reduction is minimal, and it is also unlikely to be in addition to the estimated revenue losses from the reductions in ACLs, because NMFS expects fishermen to catch the full amount of the ACLs even with an increase in the minimum size limit for mutton snapper.

Increasing the commercial gag minimum size limit in the Gulf from 22 inches (55.8 cm), TL, to 24 inches (60.9 cm), TL, could potentially reduce commercial gag landings by 12,207 lb (5,537 kg) annually, or approximately \$61,890 in total vessel revenues. These landings and revenue loss, however, appear unlikely because gag are managed under an individual fishing quota (IFQ) program, and IFQ participants will likely adjust their trip level catch composition throughout the year or sell a portion of their annual gag allocation to other fishers, rather than suffer a loss in revenues.

The following discussion analyzes the alternatives that were considered by the Council, including those that were not selected as preferred by the Council.

Three alternatives, including the preferred alternative described in this final rule, were considered for establishing ACLs for Gulf mutton snapper. The first alternative, the no-action alternative, would maintain the current economic benefits to all participants in the mutton snapper component of the reef fish fishery. This alternative, however, would be inconsistent with the best scientific information available and would allow more harvest than is recommended by the SSCs based on the most recent stock assessment.

The second alternative, which is the preferred alternative, includes two options, one of which is the preferred option. The non-preferred option would apply the Gulf's ACL/annual catch target (ACT) control rule, with the resultant ACT being 12 percent less than the ACL. Because the ACT is not currently used for management purposes, the economic effects of this option would be the same as that of the preferred option.

The third alternative would establish ACLs that would be lower than the ACLs in the preferred alternative, and thus would be expected to result in larger revenue losses than the preferred alternative.

Three alternatives, one of which includes the preferred alternative described in this final rule, were considered for modifying the mutton snapper minimum size limit. The first alternative, the no-action alternative, would maintain the 16-inch (40.6 cm), TL, minimum size limit for commercial and recreational mutton snapper, and thus would not be expected to change the economic benefits from fishing for mutton snapper. However, this alternative would not achieve one of the stated goals of changing the minimum size limit, which is to establish consistent size limit regulations between the Gulf EEZ, the South Atlantic EEZ, and Florida state waters.

The second alternative would increase the minimum size limit for commercial and recreational mutton snapper to 20 inches (50.8 cm), TL. This alternative would be expected to result in larger revenue reductions to commercial vessels than the preferred alternative.

Two alternatives, including the preferred alternative described in this final rule, were considered for modifying the commercial gag minimum size limit. The only alternative to the preferred action is the no-action alternative which would retain the 22-inch (55.8 cm), TL, minimum size limit for gag. However, this alternative would not establish

consistent size limit regulations between the Gulf EEZ, the South Atlantic EEZ, and Florida state waters. Furthermore, although the preferred alternative is expected to reduce vessel revenues by approximately \$61,890 relative to the no-action alternative, as previously noted, such revenue reduction is deemed unlikely under an IFQ program.

List of Subjects in 50 CFR Part 622

Commercial, Fisheries, Fishing, Gag, Gulf of Mexico, Mutton snapper, Recreational, Reef fish.

Dated: June 18, 2018.

Samuel D. Rauch III,

Deputy Assistant Administrator for Regulatory
Programs,

National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 622 is amended as follows:

**PART 622--FISHERIES OF THE CARIBBEAN, GULF, AND SOUTH
ATLANTIC**

1. The authority citation for part 622 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

2. In § 622.37, revise paragraphs (a)(5) and (b)(1) to read as follows:

§ 622.37 Size limits.

* * * * *

(a) * * *

(5) *Mutton snapper*--18 inches (45.7 cm), TL.

(b) * * *

(1) *Gag*--24 inches (61.0 cm), TL.

* * * * *

3. In § 622.38, revise paragraph (b)(4) to read as follows:

§ 622.38 Bag and possession limits.

* * * * *

(b) * * *

(4) *Snappers, combined, excluding red, lane, and vermilion snapper*--10. In addition, within the 10-fish aggregate snapper bag limit, no more than 5 fish may be mutton snapper.

* * * * *

4. In § 622.41, revise the last sentence of paragraph (o) to read as follows:

§ 622.41 Annual catch limits (ACLs), annual catch targets (ACTs), and accountability measures (AMs).

* * * * *

(o) * * * The stock ACL for mutton snapper, in round weight, is 134,424 lb (60,974 kg) for 2018, 139,392 lb (63,227 kg) for 2019, and 143,694 lb (65,179 kg) for 2020 and subsequent fishing years.

* * * * *

[FR Doc. 2018-13401 Filed: 6/21/2018 8:45 am; Publication Date: 6/22/2018]